

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CURTIS L. DOWNING,

Plaintiff,

v.

AARON FORD, *et al.*,

Defendants.

Case No. 2:23-cv-0156-ART-BNW

ORDER

I. SUMMARY

Pro se Plaintiff Curtis L. Downing, an inmate in the custody of the Nevada Department of Corrections (“NDOC”), brings a facial constitutional challenge regarding Senate Bill 182, which created the Statute Revision Commission (“Commission”), against Defendants Aaron Ford, Steve Sisolak, Brian Sandoval, Adam Laxalt, and Steven Wolfson. (ECF No. 12). The Court dismissed Plaintiff’s Complaint without prejudice (ECF No. 5) and granted him leave to file an amended complaint (ECF No. 10). Before the Court is a Report and Recommendation (“R&R”) of U.S. Magistrate Judge Brenda Weksler (ECF No. 15), recommending the Court dismiss Plaintiff’s Amended Complaint with prejudice for failure to state a claim and deny Plaintiff leave to file another amended complaint as futile. (ECF No. 15). Plaintiff filed an objection to the R&R. (ECF No. 16 (“Objection”).) Because the Court agrees with Judge Weksler’s analysis of Plaintiff’s First Amended Complaint, the Court will adopt the R&R in full, dismiss Plaintiff’s First Amended Complaint with prejudice, and deny Plaintiff leave to file another amended complaint. The Court will also dismiss as moot Plaintiff’s motion to renew his objections to Judge Weksler’s minute order (ECF No. 14).

II. LEGAL STANDARD

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the Court is required to “make a de novo determination of those portions of the [report and recommendation] to which objection is made.” *Id.* The Court’s review is thus de novo because Plaintiff filed his Objection. (ECF No. 16).

III. DISCUSSION

Although Plaintiff makes several arguments in his Objection, none of these arguments corrects Plaintiff’s fundamental failure to state a claim upon which relief may be granted. In his Amended Complaint and Objection, Plaintiff argues that that SB 182, which created the Commission, is facially unconstitutional because it allegedly grants judges powers and imposes duties that are non-judicial in character in violation of the separation of powers doctrine. (ECF No. 16, at 3-5). However, as Judge Weksler explained in her Report and Recommendation, challenges to SB 182 and the Statute Revision Commission using the same reasoning have repeatedly failed because courts have found that the Legislative Counsel Bureau (“Bureau”) which succeeded the Commission only codifies and classifies laws, but the Bureau does not itself exercise the legislative function. (ECF No. 15, at 2). Plaintiff asks this Court to grant leave for Plaintiff to amend his complaint. (ECF No. 16, at 8-10). However, since Plaintiffs’ claims all relate back to this separation of powers argument which has already been resolved by other courts, this Court finds that granting leave to amend would be futile and thus inappropriate.

In sum, the Court finds that Judge Weksler’s analysis of the FAC was accurate and overrules Plaintiff’s Objection.

IV. CONCLUSION

It is therefore ordered that Plaintiff’s objection (ECF No. 16) to the Report

1 and Recommendation of U.S. Magistrate Judge Brenda Wexler is overruled. The
2 Report and Recommendation (ECF No. 15) is therefore accepted and adopted in
3 full.

4 It is further ordered that the case is dismissed for failure to state a claim.

5 It is further ordered that Plaintiff is denied leave to file another amended
6 complaint as futile.

7 It is further ordered that Plaintiff's motion to renew his challenge to Judge
8 Weksler's minute order (ECF No. 14) is dismissed as moot.

9 It is further ordered that the Clerk of Court is directed to administratively
10 close this case.

11
12 DATED THIS 31st Day of July 2023.

13
14 

15 ANNE R. TRAUM
16 UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28